IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STARSHA MONET SEWELL, Plaintiff,	)	
v.	)	Cause No. 4:10-CV-00875AGF
VATTEROTT EDUCATIONAL CENTERS, INC., Defendant.	)	

DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL PLAINTIFF TO APPEAR FOR HER DEPOSITION IN THIS DISTRICT

COMES NOW Defendant, Vatterott Educational Centers, Inc., through its attorney, and pursuant to E.D.Mo. L.R. 4.01(A), files this Memorandum of Law in support of its Motion to Compel Plaintiff to Appear for her Deposition in this District:

Plaintiff lives in Capitol Heights, Maryland, a suburb of Washington, D.C. Plaintiff, *pro se*, has filed a First Amended Complaint alleging damages in the form of lost wages and emotional distress arising from alleged violations of Title VII and other federal and Missouri state laws.

Defendant's attorney has been asking Plaintiff for dates she is available for her deposition in St. Louis in mid to late January 2011 since November 9, 2010. Specifically, Defendant's attorney requested deposition dates from Plaintiff for her deposition *in St. Louis* (1) by letter on November 9, 2010 (2) in person on December 1, 2010, (3) by voicemail and email on December 7, 2010, and (4) by voicemail and email on December 9, 2010. Plaintiff had not provided any dates she is available for deposition.

On December 1, 2010, just before the Rule 16 conference began, Defendant's attorney asked Plaintiff in person for available deposition dates. Plaintiff said she would need to check with her current employer and would get back to Defendant's attorney. Defendant's attorney then asked Plaintiff if she was okay coming to St. Louis for her deposition, and Plaintiff immediately replied, "Sure. I would have no problem coming to St. Louis." It would have been easy to raise the issue of the location of Plaintiff's deposition with the Court at the Rule 16 conference, but there was no need to do so because the parties had an agreement at that time for the deposition to occur in St. Louis.

The first time Plaintiff said she would not come to St. Louis for her deposition was on December 8, 2010. Although she had agreed on December 1, 2010 to come to St. Louis, she is now refusing to.

"Ordinarily, a defendant is entitled to examine a plaintiff in the forum where plaintiff has chosen to sue. Where special circumstances are shown that outweigh any prejudice to the defendant, a court will exercise its discretion to designate a different place for the deposition." McKinzie v. Brown, 2010 WL 750069 at *1 (E.D. Mo. March 2, 2010) In this case, the general rule that Defendant is entitled to examine Plaintiff in the forum where Plaintiff has chosen to sue should apply. Plaintiff should be required to attend her deposition in St. Louis, where she chose to sue. There are no special circumstances that warrant deviating from that rule. Judge Buckles found special circumstances in McKinzie and ordered the defendant to depose the plaintiff near plaintiff's residence, either in Columbia, Missouri or Jefferson City, Missouri. Judge Buckles emphasized that the plaintiff was disabled. Here, that is not an issue, and Ms. Sewell appeared in St. Louis for the Rule 16 conference on December 1, 2010 without complaint. Additionally, Judge Buckles ordered the defendant's attorney to travel from St. Louis to Columbia or Jefferson

City (about 125 miles). Here, Ms. Sewell would have Defendant's attorney travel over 800 miles to Washington D.C.

Plaintiff's proposal that her deposition occur by telephone is not acceptable. This employment discrimination case necessarily involves credibility disputes about whether certain employment actions were motivated by legitimate business means or by unlawful motives. Defendant's attorney is entitled to question Plaintiff in person to assess her demeanor and credibility. Plaintiff is also claiming throughout her First Amended Complaint "emotional distress, paint & suffering, inconvenience, mental anguish, loss of enjoyment of life." (*See, e.g.,* ¶*54)* This is another reason why Defendant is entitled to depose Plaintiff in person to assess her demeanor and credibility. Plaintiff has demanded a jury trial, so her demeanor and credibility are all the more important for Defendant's attorney to assess.

Defendant has tried to resolve this discovery dispute with Plaintiff, and Defendant has filed a certificate of attempt to resolve this dispute concurrently with this Motion.

WHEREFORE, Defendant moves this Court to order Plaintiff to appear for her deposition in person in St. Louis, Missouri and to grant other proper relief.

VATTEROTT EDUCATIONAL CENTERS, INC.

By: /s/ Bryan P. Cavanaugh
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Certificate of Service

The undersigned certifies that a copy of the foregoing was sent by e-mail and United States mail, postage pre-paid, this 16th day of December, 2010, to the following:

Ms. Starsha Mone't Sewell
P.O. Box 7073
Capitol Heights, MD 20791
smsewell2002@yahoo.com
Plaintiff

/s/ Bryan P. Cavanaugh